IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4167 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVNAGAR MUNICIPAL CORP.

Versus

RAHIM YAKUB DERAIYA

Appearance:

MR JR NANAVATI for Petitioner

NOTICE SERVED for Respondent No. 1

MS LILU K BHAYA for Respondent No. 2

SERVED BY RPAD - (N) for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/04/2001

ORAL JUDGEMENT

Heard Mr. J.R.Nanavaty learned advocate for the

appellant; Ms. Lilu K. Bhaya learned advocate for respondent no.2. Respondent nos. 1 and 3 served.

2. The appellant - Bhavnagar Municipal Corporation has filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 (for short "the Act") so as to challenge the award rendered by M.A.C.Tribunal, Bhavnagar in the proceedings of M.A.C.Petition No.255 of 1987 dated 3.6.1998.

3. That vide impugned award, present respondent no.1 who was minor at the relevant time was awarded an amount of Rs. 26,400/- through his father and natural guardian with 12% interest on the said amount. However, the said amount of interest was payable by present appellant as well as respondent no.3 - the owner and driver of the offending vehicle from the date of application. But so far as the respondent no.2 - Insurance Company is concerned, the interest is made payable from 21.8.1996, the date on which the Insurance Company was joined as a party to the proceedings of M.A.C.Petition No. 225 of 1987.

4. That being aggrieved and dissatisfied by award, the appellant - Bhavanagar Municipal Corporation has filed the present appeal for a limited contest in respect to not directing to Insurance Company to pay the interest on the amount of award from the date of application, but from the date of joining Insurance Company as a party i.e. 21.8.1996.

5. During the hearing, learned advocate representing respondent no. 2- Insurance Company has referred to and relied on observation made by this Court in an unreported decision dated 13.11.1997 rendered in the matter of First Appeal No. 951 of 1997 wherein this Court having interpreted the provisions of Section 149 (2) of the Act has come to the conclusion that liability of the insurer could be enforceable from the date when insurer is joined as a party and becomes aware about claim made against the insured.

That in the instant case, the facts situation is peculiar and it appears that respondent no.2 - Insurance Company appears to have been joined as party to the proceedings after a lapse of about 9 years and thereby, having considered the observations of this Court as stated hereinabove and the fact that Insurance Company was impleaded as a party after a lapse of about 9 years the order allowing the interest against the Insurance Company from 21.8.1996 and so far as the appellant as

well as respondent no.3, the owner and driver of offending vehicle are concerned, are directed to pay the interest on the amount of award from the date of application till realization appears to be just, proper and reasonable.

6. In view of the above stated discussion, learned advocate for the appellant did not press the contention raised in the petition seriously and it appears that impugned award as passed by the claim Tribunal being just, proper and reasonable and being in consonance with the settled proposition of law by this Court is unassailable and thereby, appeal as filed is not tenable at law.

7. On the basis of foregoing discussion, appeal fails and stands dispossed of as rejected with no order as to costs.

(A.K.Trivedi,J.)

(vipul)